

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff

v.

HUMBERTO JOSE GARCIA,
Defendant.

NO. 2:20-cr-00197-RAJ

ORDER ON DEFENDANT'S MOTION
IN LIMINE TO EXCLUDE EVIDENCE
REGARDING FENTANYL DANGERS
AND DEATH

I. INTRODUCTION

THIS MATTER has come before the Court upon Defendant Humberto Garcia's Motion *in Limine* to Exclude Evidence re Fentanyl Dangers and Deaths. Dkt. 429. Having considered the motion, the government's response (Dkt. 436), the defendant's reply (Dkt. 438), and the files and pleadings herein, the Court finds oral argument unnecessary. For the reasons below, the Court **DENIES** motion.

II. DISCUSSION

During the course of an investigation defendant Garcia and another alleged conspirator were intercepted discussing the fentanyl overdose of a customer or associate during the wiretap. Specifically, their comments reflected their concern that the overdose would attract law enforcement attention to their activities. The government contends these statements are direct evidence of the existence and scope of the charged conspiracy and Garcia's membership in that conspiracy. Dkt. 436, at 1.

1 The government has indicated that it intends to elicit testimony from its disclosed
2 expert about the dangers of fentanyl, all of which is purportedly relevant to the
3 government's burden to establish that Garcia was involved in a conspiracy to distribute
4 fentanyl. Dkt. 436, at 2. The government has detailed the scope and extent of their
5 expert's proposed testimony.

6 The defendant seeks to exclude any evidence of the dangers of fentanyl. He
7 contends such evidence is irrelevant and suggests the Court must conduct an appropriate
8 balancing under FRE 403 to justify admission. Dkt. 438, at 2 and 6.

9 To begin, the defendant's contention that the government has failed to timely
10 disclose its drug trafficking expert is inaccurate. The record clearly indicates, without
11 rebuttal, that the government timely disclosed this expert and outlined what he would say
12 about fentanyl. Dkt. 436, at 2.

13 Generally speaking, expert testimony on the dangers of fentanyl might not
14 otherwise be admissible. However, the alleged facts of this case place the dangers of
15 fentanyl into the highly relevant category of evidence. As noted above, Garcia and
16 another co-conspirator were intercepted discussing the fentanyl overdose death of a
17 customer or associate during the wiretap. These discussions included them expressing
18 their concern that the overdose would attract law enforcement attention to their activities.
19 It is clear this is direct evidence of the existence and scope of the charged conspiracy and
20 defendant Garcia's membership in that conspiracy. Consequently, the circumstances of
21 the discussion on the wiretap change the landscape of admissibility and relevance.

22 The government's expert's testimony as proffered includes, among other claims,
23 fentanyl's unique danger and how it had an impact upon how the investigation was
24 conducted. Likewise, the government acknowledges that the two noted defendants never
25 use the term "fentanyl," but make other vague references to how it is ingested. The Court
26 agrees that the proffered expert testimony will assist the jury in putting context around
27 their conversations.
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